



October 10, 2017

Submitted via FOIA Online

National Freedom of Information Officer
Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Dear FOIA Officer:

This is a request for information by Hudson Munoz on behalf of Sierra Club, pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the U.S. Environmental Protection Agency's ("EPA") implementing regulations, 40 C.F.R. §§2.100-2.406. Sierra Club also requests a fee waiver for this request under 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l)(2).

A. Records Requested

As of October 1, 2017, media organizations, non-profit groups, and members of the public had submitted more than 60 open Freedom of Information Act requests to the Environmental Protection Agency seeking information regarding E.P.A. Administrator Pruitt's schedule or calendar (these requests are listed in Attachment A). Despite those requests, and even though the Administrator's schedule is a public record subject to disclosure under FOIA, the agency has, to date, made only partial and incomplete disclosures in response to those requests.

We hereby request copies of communications related to EPA's response to the above-described requests for Mr. Pruitt's schedule, in particular:

1. Copies of all correspondence *received* by FOIA Officers at the EPA's Headquarters from Mike Flynn, Ryan Jackson, Henry Darwin, Reginald E. Allen, Sydney Hupp, Samantha Dravis, Brittany Bolen, Shannon Kenny, Michael Abboud, Susan Bodine, Byron Brown, Patrick Davis, Douglas

Ericksen, David Fotuhi, John ("JP") Freire, Dawn Hale, Austin Henderson, James Hewitt, Milan Hupp, Albert Kelly, Daisy Letendre, Forrest McMurray, Madeline Morris, George Sugiyama, Jahan Wilcox, Layne Bangerter, Mandy Gunasakera, Justin Schwab, Kevin Chmielewski, Sarah Greenwalt, or Liz Bowman pertaining to FOIA requests for Mr. Pruitt's schedule or calendar listed in Attachment A;

2. Copies of all correspondence *sent from FOIA Officers to* any and all employees in the Office of the Administrator about the FOIA requests listed in Attachment A for Mr. Pruitt's schedule or calendar, and its disclosure; and
3. Copies of all correspondence *between* employees in the EPA's Headquarters FOIA office about the requests for Mr. Pruitt's schedule or calendar listed in Attachment A

The custodians for this request include the FOIA Officers assigned to the attached list of requests, as well as Becky Dolph, Steven Fine, and Larry Gottesman. Please limit your search to records created between January 20, 2017 and the date of this request.

For purposes of this request, the term "records" means information of any kind, including, but not limited to, documents (handwritten, typed, electronic or otherwise produced, reproduced, or stored), letters, e-mails, facsimiles, memoranda, correspondence, notes, databases, drawings, graphs, charts, photographs, minutes of meetings, electronic and magnetic recordings of meetings, and any other compilation of data from which information can be obtained. As used herein, "and" and "or" shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of these requests any information which might be deemed outside their scope by any other construction.

Further, for purposes of this request, the term "records" includes any personal email messages, telephone voice mails or text messages, and internet "chat" or social media messages, to the full extent that any such messages fall within the definition of "agency records" subject to FOIA, 5 U.S.C. § 552, and including any attachments. Per EPA records management policy, electronic messages such as text messages are agency records, which must be preserved and made accessible under the Freedom of Information Act. As such, a satisfactory search for responsive records includes a search for records created by the individuals listed above using any of the following services: Google Chat, Skype for Business, IBM Sametime, Novell Groupwise Messenger, Facebook Messaging, iMessage; Short Message Service and Multimedia Messaging Service on devices, such as Blackberry, Windows, Apple or Android devices; Google Voice, Twitter Direct Message, Slack,

Snapchat, WhatsApp, Pigeon, Yammer, Jive, or, other internal collaboration networks.

It is my understanding that in previous administrations Agency employees referred to principals by their initials, acronyms, nicknames, pseudonyms, or aliases. For example, President Clinton was sometimes referred to as “WJC” and President Barack Obama was referred to as “BO.” In 2013, it was reported that former EPA Administrator Lisa Jackson used the alias “Richard Windsor” to conduct official agency business. Therefore, a thorough search for records responsive to this request includes searching for records containing the acronyms, nicknames, pseudonyms, or aliases used to identify agency principals.

B. Claims of Exemption from Disclosure

If EPA regards any documents as exempt from required disclosure under the Freedom of Information Act, please identify each allegedly exempt record in writing, provide a brief description of that record, and explain the agency’s justification for withholding it. This explanation should take the form of a *Vaughn* index, as described in *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), and other related cases. If a document contains both exempt and non-exempt information, please provide those portions of the document that are not exempted from disclosure.

C. Request for Expedited Processing

We request that the EPA give this request the benefit of expedited processing. Sierra Club is primarily engaged in disseminating information and educating the public on policy issues of general interest, and the records will be publicly distributed upon their release. This request is urgently needed to inform the public of actual or alleged government activity. The portions of Administrator Pruitt’s calendar which have been released have revealed matters of substantial, and current, public interest. *See, e.g.*, Eric Lipton & Lisa Friedman, “E.P.A. Chief’s Calendar: A Stream of Industry Meetings and Trips Home,” *N.Y. Times* October 3, 2017 A1. Administrator Pruitt’s efforts to avoid disclosure of his activities has, likewise, been a matter of substantial public interest and concern. *See, e.g.*, Coral Davenport & Eric Lipton, “Scott Pruitt is Carrying Out His E.P.A. Agenda in Secret, Critics Say,” *N.Y. Times*, Aug. 11, 2017 A1; Lisa Friedman, “E.P.A. to Spend Nearly \$25,000 on a Soundproof Booth for Pruitt,” *N.Y. Times* Sept. 26, 2017, at A20. Responsive records will inform the public of the actions of the EPA’s FOIA office related to requests for Mr. Pruitt’s schedule.

D. Request for Waiver of Fees

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l)(2), Sierra Club requests that EPA waive all fees associated with responding to this request. Sierra

Club seeks this information in the public interest and will not benefit commercially from this request. FOIA provides that fees shall be waived “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(2). This request meets both prongs of that standard, as set forth below.

1. The Request Will Contribute Significantly to Public Understanding of the Department’s Operations and Activities.

EPA’s regulations enumerate four factors by which to determine whether a request will contribute significantly to public understanding, so as to require a waiver of fees under FOIA:

- (1) The subject of the request: Whether the subject of the requested records concerns “the operations or activities of the government”;
- (2) The informative value of the information to be disclosed: Whether the disclosure is “likely to contribute ‘significantly’” to public understanding of government operations or activities;
- (3) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether the disclosure is likely to contribute to public understanding of government operations or activities.
- (4) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities.

40 C.F.R. § 2.107(l)(2)(i)-(iv). As set forth below, each of those factors indicates that this request qualifies for a waiver of fees under FOIA.

(i) The request concerns the operations or activities of the government.

Sierra Club seeks information related to EPA’s operations and activities—specifically, its compliance with FOIA, 5 U.S.C. § 552, as regards public requests for records regarding Administrator Pruitt’s activities. The request is, moreover, directed towards a specific government action—EPA’s treatment of public requests for access to the Administrator’s calendar—over a defined time period. 40 C.F.R. §

2.107(l)(2)(i) (request must “concern identifiable operations or activities of the Federal government”).

- (ii) *The disclosure is “likely to contribute” to an understanding of government operations and activities.*

The requested records are “meaningfully informative about government operations,” and thus likely to contribute to an understanding of government operations and activities. 40 C.F.R. § 2.107(l)(2)(i). Under Administrator Pruitt, EPA has sought to “ramp up [the] secrecy” surrounding the Administrator’s activities—including by “terminat[ing] a decades-long practice of publicly posting his appointments calendar and that of all the top agency aides.” Coral Davenport & Eric Lipton, “Scott Pruitt is Carrying Out His E.P.A. Agenda in Secret, Critics Say,” N.Y. Times, Aug. 11, 2017 A1. The effects of those efforts on the agency’s compliance with FOIA, as applied to the Administrator’s appointments calendar, is central to the public understanding of EPA’s operations under Mr. Pruitt. The Administrator’s schedule has proven a central element in understanding the agency’s agenda; when disclosed, the Administrator’s calendar has generated front-page news. *See, e.g.*, Eric Lipton & Lisa Friedman, “E.P.A. Chief’s Calendar: A Stream of Industry Meetings and Trips Home”), N.Y. Times October 3, 2017 A1 (“The calendars show how companies often turn to people with close personal ties to Mr. Trump or Mr. Pruitt to set up meetings”).

The extent to which EPA intends to provide the public with access to the Administrator’s schedule, the manner in which it provides such access, and the *de facto* policies governing such access are critical to the public understanding of EPA’s operations under Administrator Pruitt. As EPA’s own website observes “[t]he success of [EPA’s] environmental efforts”—its central mission—“depends on earning and maintaining the trust of the public [the agency] serves,” its treatment of FOIA requests is a central mechanism by which EPA “earn[s] this trust.” <https://www.epa.gov/open> (last visited on October 3, 2017).

- (iii) *The information will contribute to the understanding of a reasonably broad audience of persons interested in the subject.*

This information will contribute to the understanding of a reasonably broad audience of persons interested in the subject. Sierra Club has both “expertise in the subject area,” as well as the “ability and intention to effectively convey” the requested information to the public. 40 C.F.R. § 2.107(l)(2)(iii). Sierra Club is the nation’s oldest and largest grassroots environmental organization. As such, Sierra Club has long experience with agency policies towards open government and internal secrecy, over a variety of administrations. *See, e.g.*, Linda Greenhouse, “Administration Says a ‘Zone of Autonomy Justifies Its Secrecy on Energy Task Force,” N.Y. Times April 25, 2004 (describing Sierra Club efforts to improve

transparency in government); *Environmental Integrity Project v. Small Business Admin.*, 125 F. Supp. 2d 173, 175 (D.D.C. 2015) (suit by groups including Sierra Club, pursuing FOIA request regarding agency handling of pollution-related rules).

In addition, Sierra Club has the ability and intention to convey the information sought by this request to interested members of the public. Sierra Club can publicize information received from this request in monthly electronic newsletters, through social media, and email action alerts, which together reach hundreds of thousands of members, supporters, and subscribers. And Sierra Club reaches a very broad audience. The organization has more than 3 million members and supporters nationwide, who are reached via mail, our website, emails and listservs, and public meetings and events. The Sierra Club website, which hosts a number of blogs as well as online content of the Sierra Magazine, receives more than 26 million unique visits and 30 million page views annually. Sierra Magazine publishes on a range of environmental issues, including climate and energy. For instance, Sierra recently published a story urging oil refineries and other chemical companies to prepare for severe floods related to climate change. Heather Smith, *Planning for the 100-Year Flood Applies to You Too, Chemical Company*, Sierra (Aug. 31, 2017), <http://www.sierraclub.org/sierra/planning-for-100-year-flood-applies-you-too-chemical-company>. In another example, Sierra reported on coal ash dumps and the health hazards of coal ash based in part on information gathered under FOIA. Paul Rauber, *Solving the Climate Puzzle: One Piece at a Time*, Sierra (Nov./Dec. 2009), <http://vault.sierraclub.org/sierra/200911/climate.aspx>. In addition, Sierra has been awarded multiple Maggie awards from the western Publications Association, and has been recognized repeatedly for excellence in design by *Folio* magazine's Ozzie Awards.¹ Sierra Club's communications staff can also disseminate newsworthy information obtained from this request to the media. See, e.g., Rene Marsh & Gregory Wallace, "More than 350 Jobs at EPA Unfulfilled During Trump Hiring Freeze, April 13, 2017 (available at <http://www.cnn.com/2017/04/13/politics/epa-hiring-freeze/index.html>); Lena Sun, "Nearly 700 Vacancies at CDC Because of Trump's Hiring Freeze," May 19, 2017 (available at https://www.washingtonpost.com/news/to-your-health/wp/2017/05/19/nearly-700-vacancies-at-cdc-because-of-trump-administration-hiring-freeze/?utm_term=.f7b19c738148).

¹ With the award-winning Sierra magazine and our extensive use of blogs to communicate with the public, Sierra Club would at a minimum be eligible for a fee waiver as a media requestor. 5 U.S.C. § 552(a)(4)(A)(ii); 40 C.F.R. § 2.107(c)(1)(iii); see also 40 C.F.R. § 2.107(b)(6) (defining "[r]epresentative of the news media"). A representative of the news media is "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a "non-profit public interest organization" qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public).

In sum, Sierra Club has the ability to digest and disseminate information gleaned from FOIA requests to the general public, and will make any newsworthy information or documents received in response to this request publicly available.

- (iv) *The information will contribute “significantly” to public understanding of government operations or activities.*

The information Sierra Club seeks will contribute significantly to public understanding of EPA’s operations and activities. EPA has ended its long-standing practice of publishing the Administrator’s schedule and calendar; it has offered the public no insight into the policies and practices by which it intends to make that calendar available going forward, or of the manner in which it is maintaining records relating to the Administrator’s schedule. The “level of public understanding prior to the disclosure” sought here is, consequently, near zero. 40 U.S.C. § 2.107(l)(2)(iv). The information sought by the request will illuminate the manner in which the Agency understands its legal obligations to make the Administrator’s schedule and calendar available, and the manner in which it has met, and intends to meet, those obligations. The requested disclosure will, consequently, “be enhanced by the disclosure to a significant extent.” 40 U.S.C. § 2.107(l)(2)(iv).

2. The Sierra Club Has No Commercial Interest in Disclosure

Sierra Club is a non-profit organization with no commercial, trade, or profit interests in the requested information. We seek to use this information solely to inform the public and to ensure government accountability, as well as to enhance public understanding of EPA’s operations, and its fulfillment of its mission to protect public health and the environment. Sierra Club has no relevant commercial interest, and the request is entirely in the public interest.

For all of the foregoing reasons, a fee waiver is warranted here under 5 U.S.C. § 552(a)(4)(A)(iii) and 40 CFR § 2.107(l). If EPA does not believe that the above information is sufficient to justify a fee waiver, please contact us for further documentation before deciding upon the waiver request.

E. Conclusion.

Thank you for your assistance processing this request. Please contact me at the email or telephone number below if you have any questions or concerns about this request for information.

Sincerely,



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(202) 748-2309